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IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1989  
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JANE HODGSON, M.D., et al.,  
Petitioners,

v.

STATE OF MINNESOTA, et al.,  
Respondents.  
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On Writ of Certiorari to the United States Court  
of Appeals for the Eighth Circuit  
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BRIEF AMICUS CURIAE OF THE ELLIOT  
INSTITUTE FOR SOCIAL SCIENCES RESEARCH,  
AND THE AMERICAN ACADEMY OF MEDICAL ETHICS.  
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109 pp

## TABLE OF CONTENTS

	page
TABLE OF AUTHORITIES . . . . .	vi
INTERESTS OF AMICI . . . . .	1
SUMMARY OF ARGUMENT . . . . .	1
ARGUMENT . . . . .	5
I. PARENTAL NOTIFICATION	
REQUIREMENTS SERVE TO PROTECT MINORS FROM BEING COERCED INTO UNWANTED ABORTIONS. . . . .	5
II. PARENTAL NOTIFICATION	
REQUIREMENTS PROVIDE HELP TO REDUCE OR PREVENT THE HARMFUL AFTEREFFECTS OF ABORTION IN MINORS. . . . .	11
III. ROE DID NOT GRANT WOMEN A	
FUNDAMENTAL RIGHT TO ABORTION, BUT FOUND THIS NEW RIGHT AS EVOLVING FROM THE DEVELOPMENT OF NEW TECHNOLOGIES WHICH MAY HAVE MADE ABORTION "SAFER THAN CHILDBIRTH." . . . .	13
A. ABORTION TECHNOLOGIES INVOLVE	
HEALTH RISKS WHICH WERE NOT KNOWN, WERE NOT UNDERSTOOD, OR	

WERE OTHERWISE IGNORED IN ROE V.

WADE. . . . . 14

B. THE STATE'S TWO-FOLD INTEREST IN  
PROTECTING THE HEALTH OF WOMEN  
AND PROTECTING THE LIFE OF HUMAN  
EMBRYOS MITIGATES AGAINST ANY  
ABSOLUTE RIGHT TO ABORTION  
TECHNOLOGY. . . . . 17

IV. ROE DID NOT RECOGNIZE AN  
ABSOLUTE RIGHT OF ABORTION, BUT  
RATHER FOUND THIS NEW "RIGHT" AS  
HAVING EVOLVED FROM TECHNOLOGICAL  
ADVANCES. . . . . 18

V. THE STATE HAS A LEGITIMATE  
INTEREST IN REGULATING BIRTH CONTROL  
TECHNOLOGIES SUCH AS ABORTION. . . 20

A. THE MEDICAL COMMUNITY IS ALREADY  
LEGITIMATELY REGULATED BY  
GOVERNMENT BODIES, AND THIS  
REGULATION INCLUDES REGULATION OF  
BIRTH CONTROL TECHNOLOGIES. . . 20

B. THE RIGHT OF THE STATE TO CONTROL  
BIRTH CONTROL TECHNOLOGIES IS  
ALREADY ESTABLISHED IN  
CONSTITUTIONAL LAW. . . . . 20

C. STATES MUST BE FREE TO ADJUST  
REGULATION OF BIRTH CONTROL  
TECHNOLOGIES TO MEET CHANGING  
CONDITIONS. . . . . 28

D. STATE REGULATION OF BIRTH  
CONTROL TECHNOLOGIES IS  
ESPECIALLY JUSTIFIED BECAUSE  
PHYSICIANS, FAMILY PLANNING AGEN-  
CIES AND DRUG MANUFACTURERS HAVE  
A FINANCIAL INTEREST IN PROMOTING  
BIRTH CONTROL TECHNOLOGIES WHICH  
MAY HAVE DETRIMENTAL SIDE-EFFECTS  
OR MAY BE LESS THAN FULLY  
EFFECTIVE. . . . . 30

E. STATE REGULATION OF BIRTH  
CONTROL TECHNOLOGIES IS  
ESPECIALLY JUSTIFIED BECAUSE MANY  
PHYSICIANS, FAMILY PLANNING

AGENCIES AND DRUG MANUFACTURERS  
ARE IDEOLOGICALLY BOUND TO  
REDUCING BIRTHS AMONG SOME  
CLASSES OF WOMEN REGARDLESS OF  
THE DETRIMENTAL SIDE-EFFECTS  
WHICH THEIR TECHNOLOGIES WILL  
IMPOSE ON WOMEN. . . . . 31

VI. THREATS TO TRUE REPRODUCTIVE  
FREEDOM FROM PRIVATE INTERESTS AND  
THE STATE REQUIRE THAT THE  
INDIVIDUAL'S NATURAL RIGHT TO  
REPRODUCTIVE FREEDOM MUST BE  
CLARIFIED AND STRENGTHENED. . . . . 45

A. THE FUNDAMENTAL RIGHTS OF  
REPRODUCTIVE FREEDOM AS  
GUARANTEED IN THE CONSTITUTION-  
ALLY RESERVED RIGHTS OF  
INDIVIDUALS ARE THOSE NATURAL  
RIGHTS WHICH ARISE FROM A  
PERSON'S NATURAL SEXUALITY.  
SPECIFICALLY, 1) THE STATE MAY  
NOT FORCIBLY LIMIT ANY PERSON'S

NATURAL FERTILITY OR PREVENT  
PERSONS FROM NATURALLY CONCEIVING  
OR BEARING CHILDREN, AND 2) THE  
STATE MAY NOT FORCE ANY PERSON TO  
CONCEIVE CHILDREN NOR COMPEL ANY  
PERSON TO PROVIDE REPRODUCTIVE  
MATERIAL FOR THE ARTIFICIAL  
CONCEPTION OR GESTATION OF  
CHILDREN. . . . . 51 -

B. THE STATE'S REGULATION OF BIRTH  
CONTROL TECHNOLOGIES POSES NO  
THREAT TO THE INDIVIDUAL'S  
NATURAL RIGHT TO REPRODUCTIVE  
DECISIONS. . . . . 58

CONCLUSION . . . . . 64

#### APPENDIX A -

DESCRIPTION OF AMICI . . . . . 1a

#### APPENDIX B -



A SUMMARY OF SOME PUBLISHED CASES OF MINORS AND WOMEN COERCED INTO ABORTION . . . . .	3a
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x	page
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xi	page
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BRIEF AMICUS CURIAE OF THE ELLIOT  
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## INTERESTS OF AMICI

The Elliot Institute for Social Sciences Research, and the American Academy of Medical Ethics favor holding the Minnesota statute, Minn. Stat. Ann. §§ 144.343 (2)-(7) (1987) constitutional in its entirety. Amici believe that limitations on State regulation of abortion have resulted in the exploitation of women and minors who are at high-risk of suffering abortion related complications. Knowing that these high-risk women are being coerced into abortion for the convenience of others, Amici supports parental and State involvement which protects women from unwanted abortions and which preserves their natural rights to reproductive freedom.

## SUMMARY OF ARGUMENT

Thirty to sixty percent of all women having abortions actually want their child-

ren.<sup>1</sup> Many of these women submit to unwanted abortions only because they feel pressured or coerced into aborting pregnancies which are "unwanted" by their boyfriends, husbands, physicians, counselors, welfare workers, or population planners. The involvement of parents may often be the only protection a minor has from the pressures which make her feel abortion is her "only choice."

It is an undeniable fact that abortion involves health risks. Though the exact frequency and extent of these risks are in dispute, the right to evaluate these threats properly lies with the State. The State has a right to judge the "significance" of the health risks of any product or service and to regulate or prohibit trades or practices accordingly. This

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<sup>1</sup> M. Zimmerman, Passage Through Abortion, 110-112 (1977) (hereinafter Zimmerman); D. Reardon, Aborted Women - Silent No More, 12,51 (1987) (hereinafter Reardon).

right includes the right to regulate reproductive technologies, including abortion.

Abortion, itself, is not a fundamental right, but rather an "evolved" right. In Roe v Wade, 410 U.S. 113, 163 (1973) this right was described as evolving from advances in medical technology by which abortion may now be safer than childbirth. According to this reasoning, as technological changes reveal abortion to be more or less dangerous, the State's "compelling" interests increase or decrease proportionately. Therefore, since abortion involves risks even in the first trimester, some of which were not recognized prior to Roe, the State has a compelling interest in regulating abortion throughout pregnancy.

The fundamental issue before this Court is to identify the proper balance between the rights of individuals and of the State. Amici will show that the right of States to regulate birth control technologies

includes the right to regulate abortion. Yet at the same time, Amici recognizes that the State's right to regulate these technologies, is properly limited by the inherent and natural right of individuals to conceive and bear children.

Such a balance of natural rights versus regulation of technology can and should be enunciated, especially now when individual rights are being threatened as never before. In the place of the present confusion surrounding "privacy" rights, Amici offers the Court a clear rationale and timeless standard for protecting both the natural reproductive rights of individuals and the right of State to regulate technologies and commerce.

## ARGUMENT

### I. PARENTAL NOTIFICATION REQUIREMENTS SERVE TO PROTECT MINORS FROM BEING COERCED INTO UNWANTED ABORTIONS.

Many women and minors face coercive pressure to undergo unwanted abortions of desired pregnancies.<sup>2</sup> Furthermore, it has been shown that 65 to 70 percent of women

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<sup>2</sup> Between 30 and 60 percent of women having abortions have a positive desire to carry the pregnancy to term and keep their babies. [Zimmerman, 110-12, 120; Reardon, 12, 51] This desire to keep the child is overcome only by external pressures. In a study of over 250 women who had suffered physical or psychological aftereffects from abortion, 55 percent felt "forced" into an unwanted abortion by others and 64 percent felt "forced" by their circumstances. Only 33 percent felt free to make their own decision, and 61 percent felt their lives and decisions at that time were very much "controlled by others." [Reardon, 10-11] Pro-choice researchers have similarly found that over two-thirds of the women made statements suggesting they had "no choice" or were "forced" to have an abortion. [Zimmerman, 193] Testimony from minors who were coerced into abortion are included in the appendices to this brief.



seeking abortions have a negative moral view of abortion.<sup>3</sup>

Coercion and moral ambivalence are the primary factors which determine whether or not a woman is likely to suffer long-term mental health problems as a result of her abortion. Women are at high risk of severe post-abortion psychiatric reactions if: 1) they feel coerced by others, either overtly or covertly, into choosing an abortion; 2) they feel "forced" by circumstances into aborting a wanted pregnancy; 3) they have ambivalent feelings about the moral rightness of their abortion; or 4) if they have unresolved feelings of desire for their pregnancies or their babies.<sup>4</sup>

<sup>3</sup> Zimmerman, 69; Reardon, 13

<sup>4</sup> Friedman, et. al., "The Decision-Making Process and the Outcome of Therapeutic Abortion", Am. J. Psychiatry, v.131, 1332-1337 (1974) (hereinafter Friedman); Senay, "Therapeutic Abortion: Clinical Aspects", 23 Archives of Gen. Psych., 408-415, (1970); Lazarus, "Psychiatric Sequelae of Legalized Elective First Trimester

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If any of these conditions exist, the woman is likely to experience her abortion as in conflict with her maternal instincts and moral self-image. For these women, abortion is not a glorious right by which they are able to reclaim control over their lives; instead it is an "evil necessity" to which they are forced to submit because they "have no choice." Rather than affirming their values, these women feel forced to compromise and betray their values. The resulting blow to a woman's self-image can result in: suicidal behavior, drug and alcohol abuse, radical personality changes, loss of interest in previously enjoyed activities, emotional breakdown, memory loss, eating disorders, sexual dysfunction, psychosomatic illness, emotional numbness, sleep disorders, increased tendency toward violence, child abuse, difficulty bonding with later children, and more. The summary of a detailed survey of 100 high-risk abortion patients, entitled "Post-Abortion Reactions of High Risk Abortion Patients," has been lodged with this brief.

It is noteworthy that the criteria for high risk abortion patients - feelings of being under pressure to abort and feelings of ambivalence - are typical of women who abort for reasons of physical health, psychological health, fetal malformation, and rape or incest. Indeed, when viewed within the framework of high-risk criteria, all of the categories typically associated with "hard case" abortions are actually contraindications for abortion. While there are

Sixty to eighty percent of all women having illegal abortions can be classified as "soft-core" aborters who choose abortion only to please others, or because they feel at a loss for other options.<sup>5</sup> For these women, abortion is at best a marginal choice, at worst a choice which is literally forced upon them. Very few of these women would freely choose abortion in

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many reasons for this, a simplified explanation is that the harder the circumstances which a pregnant woman faces, the more likely she is to feel "forced" into a decision which is not freely her own. See Rayburn and Laferia, "Mid-Gestational Abortion for Medical or Genetic Indications", Clinics in Ob&Gyn. (1986), vol.13, no.1., Heath, "Psychiatry and Abortion", 16 Canadian Psych. Assoc. Journal, 55-63 (1971); Blumberg, et.al. "The Psychological Sequelae of Abortions Performed for a Genetic Indication", 122:7 Am. J. Ob&Gyn. (1975), Mahkorn, "Pregnancy and Sexual Assault", and Maloof "The Consequences of Incest: Giving and Taking Life", The Psychological Aspects of Abortion, Mall and Watts, eds. (1979); Reardon, 161-218; Friedman, 1332-1337.

<sup>5</sup> Reardon, 131-134, 297-300.

the presence of emotional, social, or financial support. Very few would have had an illegal abortion under the protection of pre-Roe laws.<sup>6</sup>

Thus, one effect of legalizing abortion has simply been to make it easier to pressure women into unwanted abortions. Parents are frequently the only ones who can help to alleviate these pressures.<sup>7</sup>

Ironically, nothing prevents parents from forcing their daughters to have abortions. Such coercion is in fact, rela-

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<sup>6</sup> Only 6 to 20 percent of the women having abortions would have been willing to seek an illegal abortion. Osofsky, eds., The Abortion Experience, 196-98 (1973); Reardon, 13.

<sup>7</sup> In the Reardon sample of 252 high-risk women, 83 percent stated they would have kept the pregnancy if they had been encouraged to do so by one or more other persons, and 84 percent would have carried to term under "better circumstances." To the degree that parents may provide the encouragement or circumstantial aid which a minor needs and wants, young girls can be helped to avoid the "evil necessity" of an unwanted abortion. [Reardon, 10-11]



tively common. [Reardon, 11] There are even documented cases where the parent with custody of a child forced an abortion on the girl which the non-custodial parent would have prevented. [Reardon, 212-218]

Parents who would take a pro-abortion stance almost inevitably get the opportunity to force their will upon their child, since a pregnancy cannot be hidden forever. Yet parents who would support and encourage a daughter to keep her child are often denied any input.

In short, without parental notification, present law acts as a one way funnel which allows parents to pressure their daughters into abortions, yet prevents those parents who would support childbirth from helping their daughters avoid unwanted abortions.

## II. PARENTAL NOTIFICATION REQUIREMENTS PROVIDE HELP TO REDUCE OR PREVENT THE HARMFUL AFTEREFFECTS OF ABORTION IN MINORS.

Roe recognized that women do not have an absolute right to abortion, but rather that it is "primarily a medical decision, and basic responsibility for it must rest with the physician." (at 166, also 163) Yet parental involvement is equally important, and perhaps even more important, since the attending physician may have little or no knowledge of the girl's medical history. Worse yet, the abortion providers may have a blatant disregard for a young girl's medical history.<sup>8</sup>

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<sup>8</sup> In 1986, Mrs. Wallis B. Renner filed a \$1 million lawsuit against Planned Parenthood of Central Indiana claiming they risked the life of her 16-year-old daughter in providing her with an abortion despite two court orders blocking the abortion. Mrs. Renner had obtained the court orders because her daughter had certain abnormalities of the cervix which her own doctor testified would cause serious physical problems or even death if the girl underwent an abortion. The Planned Parenthood

In addition parents have an obvious need to know when their child has been through an abortion so that they can provide special care if and when it becomes necessary. The fact that a minor might be too ashamed to tell her parents about an abortion is highly suggestive that she has conflicting feelings about her decision, and thus is more likely to be a high-risk patient. Furthermore, to allow the abortion to remain hidden only increases the pressure on the daughter to repress and hide her feelings which, in turn, may aggravate her long-term reaction.

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counselors even denied Mrs. Renner the right to ensure that the out-of-state abortionist was informed of her daughter's condition. Following the abortion, Mrs. Renner's daughter suffered severe cramps for which she required treatment. Bond, "Mother Files \$1 Million Lawsuit," National Right to Life News, October 23, 1986, p6.

III. ROE DID NOT GRANT WOMEN A FUNDAMENTAL RIGHT TO ABORTION, BUT FOUND THIS NEW RIGHT AS EVOLVING FROM THE DEVELOPMENT OF NEW TECHNOLOGIES WHICH MAY HAVE MADE ABORTION "SAFER THAN CHILDBIRTH."

The challenge against State notification laws hinges on the contention that such laws impose undue hardship on a minor's exercise of her fundamental rights. But access to abortion technology is clearly not a fundamental right of women, as can be seen by the fact that Roe assigns responsibility and control over abortion primarily to the attending physician. Roe, 410 U.S. at 163 and 166.

But if the consultation and consent of a physician can be required in the making of this health decision, why not the consultation and consent of parents? Why not the consultation and consent of the State? Parents and the State have an interest in safeguarding the health of women which is



equal to or greater than that of individual physicians.

The following arguments will examine the State's compelling interest in safeguarding the health of women through parental notification or direct regulation of abortion technology.

A. ABORTION TECHNOLOGIES INVOLVE HEALTH RISKS WHICH WERE NOT KNOWN, WERE NOT UNDERSTOOD, OR WERE OTHERWISE IGNORED IN ROE V. WADE.

While Roe considered only the mortality rate of abortion in its determination that abortion is "safe," new evidence suggests that there are unforeseen psychological and reproductive complications resulting from abortion. These health risks have been amply documented for the Court in other briefs and the medical literature and will not be elaborated on here.

Notably, even proponents of abortion do not claim that it is risk free.<sup>9</sup> Indeed, they oppose notification requirements on the grounds that a delay in procuring an abortion can result in a statistically significant increased mortality risk.

Hodgson v Minnesota, 648 F.Supp. 756, 764-65 (1988). But if such statistical risks are compelling enough to warrant judicial action, then certainly the State can also find in the same statistical risks compelling reasons for regulating abortion.

Abortion's defenders do not deny its risks so much as downplay them, arguing

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<sup>9</sup> In fact, the undesirable nature of abortion is universally acknowledged. Abortion providers go to great lengths to encourage sterilization or improved birth control practices for patients, and frequently express disdain toward women who come back seeking repeat abortions. [Francke, The Ambivalence of Abortion, 182 (1978)] If there is nothing wrong with abortion, why do abortion supporters advocate its avoidance? If abortion is "safe," why not promote its use in place of the Pill which has numerous health risks.

that the damages caused by 1.5 million abortions per year are "acceptable" or "minimal." But such evaluations are clearly value judgments. If the State can be concerned about unintended deaths from abortion, why not subsequent miscarriages or ectopic pregnancies? Who is to decide what the "acceptable" limits of abortion induced depression, guilt, suicide, or child abuse are to be?

If the Court continues to reserve to itself the right to judge the relative risks of abortion, will it require that the Surgeon General bring future research into the aftereffects of abortion before the Court to be ratified and approved? Or is all future research irrelevant once the Court has declared this technology to be safe? Obviously not.

Given the uncertainty surrounding the impact of all technologies, the State's compelling interests may change with time.

The State must be free to adjust regulation of technology in accordance with such new information and needs.

B. THE STATE'S TWO-FOLD INTEREST IN PROTECTING THE HEALTH OF WOMEN AND PROTECTING THE LIFE OF HUMAN EMBRYOS MITIGATES AGAINST ANY ABSOLUTE RIGHT TO ABORTION TECHNOLOGY.

Since abortion has health risks, even during the first trimester, the State may find in these risks a compelling interest to protect women from these risks throughout pregnancy.<sup>10</sup>

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<sup>10</sup> The State's right to regulate this technology is especially important since there is no guarantee that women considering abortions will be adequately and accurately informed of the health risks or will be in the proper emotional state to rationally weigh these risks. The record of abortion providers withholding information about the risks of abortion for fear of discouraging their client from "the right choice" has been well documented by numerous sources. For a review of the literature see Reardon, 232-271.

IV. ROE DID NOT RECOGNIZE AN ABSOLUTE RIGHT OF ABORTION, BUT RATHER FOUND THIS NEW "RIGHT" AS HAVING EVOLVED FROM TECHNOLOGICAL ADVANCES.

The rationale for the abortion right enumerated in Roe rests entirely on the disputed "fact" that advances in medical technology make "abortion in early pregnancy...relatively safe"(at 149) and that today "mortality in abortion may be less than mortality in normal childbirth." (at 163).

But how can a "fundamental" human right come into existence only when abortion appears to be safer than childbirth? If it is a fundamental right, then it is a right which exists regardless of its dangers. By what power can any fundamental right be expanded or contracted merely by changes in medical technology?

The answer is that abortion is not a fundamental right. Rather, it is an

evolved right which rests upon advances in medical science.

Because it was dealing with an evolved right, the Roe majority erred in thinking that the medical "facts" which it found to be compelling in 1973 would not change with the acquisition of new knowledge, new technologies, and new social values in 1990 and beyond. If at one moment in history the State's "legitimate interests in protecting both the pregnant woman's health and the potentiality of human life" (Roe, 410 U.S. at 115,149) can contract, then at another point in history they can expand. If, for example, new technologies make unsuspected risks more apparent, the State's rights may expand. Similarly, knowledge of fetal development, new theories of "meaningful life," and advances in fetal medicine and



artificial wombs may also change the states "compelling" interests over time.<sup>11</sup>

V. THE STATE HAS A LEGITIMATE INTEREST IN REGULATING BIRTH CONTROL TECHNOLOGIES SUCH AS ABORTION.

A. THE MEDICAL COMMUNITY IS ALREADY LEGITIMATELY REGULATED BY GOVERNMENT BODIES, AND THIS REGULATION INCLUDES REGULATION OF BIRTH CONTROL TECHNOLOGIES.

B. THE RIGHT OF THE STATE TO CONTROL BIRTH CONTROL TECHNOLOGIES IS ALREADY ESTABLISHED IN CONSTITUTIONAL LAW.

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<sup>11</sup> In its eagerness to grant physicians the right to perform "safe" abortions, which many States were already recognizing, the Roe majority's fundamental error was in granting itself the authority to restrict and define those interests which the State could find to be "compelling." If the State is not free to be guided by its own judgments of what is compelling and what it not, then the State is not free at all.

In Griswold v. Connecticut 381 U.S. 479 (1964), at 485, the Court recognized that the State could regulate the manufacture, sale, and distribution of contraceptives in the same way that it is empowered to regulate any other trade or commerce.<sup>12</sup>

As emphasized in Griswold, the failure of the Connecticut law was not that its goals, or even its means were illegitimate, but rather that its means were incongruous with other laws. To allow the manufacture and distribution of contraceptives, but to ban their "use" is unreasonable. Such a

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<sup>12</sup> In his dissent in Poe v. Ullman, 367 U.S. 497 (1960), which anticipated his majority opinion in Griswold, Justice Douglas recognizes that States would have a right to ban completely the sale of contraceptives through drug stores, or even ban the manufacture of contraceptives because: "Where either the sale or the manufacture is put under regulation, the strictures are on business and commercial dealings that have had a long history with the police power of the States. The present law, however, deals not with sale, not with manufacture, but with use." (at 519).



means, in the absence of less intrusive controls, "sweep unnecessarily broadly and thereby invade the area of protected freedom." (at 485) The necessity of proving the use, not just possession, of contraceptives to enforce this law clearly would involve severe invasion of marital privacy. Nonetheless, as Griswold allows, the State does have the right to regulate contraceptives by other means.

Similarly, in Eisenstadt v Baird, 405 U.S. 438, 443, 454 (1971) and White concurring, at 463, the plurality allows for the State's legitimate interests in regulating contraceptives for the purposes of protecting health or discouraging extra-marital relations. In its recognition of these interests, Eisenstadt supports the present arguments of Amici.

But the Eisenstadt decision warrants further discussion because while the Court therein acknowledged the State's right to

regulate birth control technologies, in fact the plurality did not allow itself to be governed this principle. Instead the Court gave itself the authority to strike down the Massachusetts law on the grounds that it doubted the sincerity of the Massachusetts legislators' goals.<sup>13</sup>

Specifically, the Court questioned the sincerity of the Massachusetts' legislation

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<sup>13</sup> Though the State sincerely claims its legislation is intended to be a health measure, the majority rejects that claim. (at 452) The State claims further that its legislation is intended to deter immorality, and the Court finds this claim to be absurd. (at 449) When the Court thus judges the sincerity of duly elected legislators, the Court overreaches itself. If legislators are insincere and oppressive in their legislative efforts, they will be forced to answer to the people when seeking reelection -- especially if their insincerity is leading them to oppress the people's rights. But if their reasoning, even if flawed, represents the opinion of the majority of citizens, than the legislature's rationale is a reasonable representation of the people's will. Similarly, whether or not a State's legislation is effective at reaching difficult goals is an issue for the legislatures to decide, not the judiciary.

regulating distribution of contraception on moral grounds because the State allowed for the "exception" of unregulated distribution of condoms. (at 448,449) But this "exception" existed because the State chose to classify condoms as being primarily a prophylactic with a secondary effect as a contraceptive. For logical reasons the State therefore chose to regulate prophylactics differently than other contraceptives.<sup>14</sup>

Given the present AIDS crisis, which Surgeon General Koop assures us can be alleviated by the promotion of condoms, the Eisenstadt decision appears in hindsight to have dismantled an important public health

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<sup>14</sup> And even if condoms should be classified as a contraceptive, the simple fact that a State prefers to encourage the use of one contraceptive method over another, does not provide constitutional grounds for preventing States from regulating birth control technologies which it does not favor.

policy which gave preferable treatment to prophylactic birth control devices.

The existence of "exceptions" in any law is not proof of a legislature's insincerity, much less its unconstitutionality. If the laws appear to be filled with "exceptions", such is the natural result of legislatures working to achieve compromises which reflect both charity and justice, freedom and control. Though the law in question was imperfect and prone to "exceptions," such compromises are the backbone of American legislation.<sup>15</sup>

The Eisenstadt plurality further ruled that States could not limit distribution of contraceptives to physicians simply because the Court did not believe that protecting the health and ensuring accurate contracep-

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<sup>15</sup> When the judiciary sets itself up to judge the sincerity of legislator's motives and the logical purity of their laws, it is doing nothing less than engaging in judicial activism. (see Griswold, 381 U.S., Black dissenting, 520-524)

tive advice was the true intention of the legislature. (at 450-451) But even if one ignores this disparagement of the Massachusetts legislature's integrity, this argument fails because it takes a very narrow view of the State's health concerns. Birth control technologies involve a broad range of health and social issues, including the risk of unplanned pregnancies.

Specifically, the Eisenstadt majority forbade State regulation of the distribution of contraceptives which have no health risks. (at 451, White concurring, 464) But spermicidal agents, the contraceptive at issue in Eisenstadt, are now known to carry the risk of causing genital irritation, infection, serious fetal malformations, and miscarriage.<sup>16</sup>

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<sup>16</sup> Jick, "Vaginal Spermicides and Congenital Disorders" 245 J.A.M.A. 1329-32 (1981). In Wells v Ortho Pharmaceutical Co., 615 F.Supp. 262 (N.D. Ga. 1985), plaintiffs were awarded \$5.6 million in compensatory damages for birth defects

Since the health effects of any technology can remain undetected for many years, it is imprudent for the Court to ever classify any contraceptive as "safe" merely on the evidence available at one point in time. Determination of when a contraceptive has been sufficiently proven to be "risk-free" is properly left to the individual States.

In addition spermicides, like many other contraceptive devices, have a high failure rate in preventing conception. Therefore, State regulation of those who distribute and counsel others in the use of birth control technologies is clearly reasonable when the State's "health" interests are broadly construed to include concern for unplanned pregnancies.

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resulting from spermicide use.



C. STATES MUST BE FREE TO ADJUST  
REGULATION OF BIRTH CONTROL TECHNOLOGIES TO  
MEET CHANGING CONDITIONS.

Reproductive control decisions have a number of personal and social implications. For example, during a time of a great venereal disease threat such as AIDS, it is conceivable that the State may seek to promote prophylactic contraceptives and discourage other methods. At other times, the State may wish to ban contraceptives which are less effective or have greater risks than other alternatives.<sup>17</sup>

Judicial intervention in the regulation of birth control technologies threatens the ability of the States to respond to changing social and public health needs. If at times legislation falls behind current

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<sup>17</sup> Such was the case when the FDA forced the removal of "sequential pills" from the market because, according to current data, combination pills are more effective and have fewer risks. FDA Consumer 25 (April 1976).

knowledge of what is "safe" or "effective," public opinion will soon force change. The judiciary should restrain its desire to intervene as a super-legislature.

In the cases of Eisenstadt and Roe, the Court forced changes upon the States which the legislatures were already freely considering. The result of such judicial activism is the establishment of arbitrary and confusing law, an invitation to duplicate such activism in the lower courts, and heightened tension between the courts and the legislatures. Let legislators legislate, and eventually they will get it right on their own.

D. STATE REGULATION OF BIRTH CONTROL  
TECHNOLOGIES IS ESPECIALLY JUSTIFIED  
BECAUSE PHYSICIANS, FAMILY PLANNING AGEN-  
CIES AND DRUG MANUFACTURERS HAVE A FINAN-  
CIAL INTEREST IN PROMOTING BIRTH CONTROL  
TECHNOLOGIES WHICH MAY HAVE DETRIMENTAL



SIDE-EFFECTS OR MAY BE LESS THAN FULLY EFFECTIVE.

The birth control and abortion industries in America encompass a multi-billion dollar market plus hundreds of millions in government subsidies. Drug manufacturers, physicians, and family planning agencies all enjoy a share in these profits, and all of these parties have a financial interest in these technologies.

Part of this promotion includes defending their technologies from charges of being unsafe. Thus, like the tobacco industry which publishes a study exonerating cigarettes for every study which condemns them, so the drug companies publish a study "proving" their contraceptives are "safe" for every study which suggests the opposite. The controversies surrounding the health risks of the IUD and the Pill, for example, have gone on for decades and are still unresolved.

Thus, while evidence exists to defend or condemn any birth control device, those who sell these products will tend to believe and promote the evidence which supports their interests. If the State considers such a one-sided assessment of risks to be an exploitation of the people, it may properly regulate these technologies according to its own assessment of risks and effectiveness.

E. STATE REGULATION OF BIRTH CONTROL TECHNOLOGIES IS ESPECIALLY JUSTIFIED BECAUSE MANY PHYSICIANS, FAMILY PLANNING AGENCIES AND DRUG MANUFACTURERS ARE IDEOLOGICALLY BOUND TO REDUCING BIRTHS AMONG SOME CLASSES OF WOMEN REGARDLESS OF THE DETRIMENTAL SIDE-EFFECTS WHICH THEIR TECHNOLOGIES WILL IMPOSE ON WOMEN.

The natural reproductive rights of persons are being threatened. But contrary to the rhetoric surrounding the abortion

issue, the rights of individuals are threatened not by anti-abortionists, but by pro-abortionists.

Many of the persons and organizations who advocate abortion under the banner of "reproductive freedom" are in fact less concerned about the reproductive freedom of individuals than about the control of individuals' reproduction. These population controllers and social engineers realize that in order to achieve their eventual goal of forced reproductive control for the "common good" they must first expand individual "rights" to include the tools they will need. After all, if abortion is accepted for the individual good of women, why not require forced abortion for the "common good?"

A good case can be made that it is population controllers who initiated the movement to legalize abortion, financed the movement, promoted abortion, and provided

abortions, and have erected social structures to pressure women, especially among the poor, into having unwanted abortions. These groups and individuals have exploited women's rights rhetoric to advance their own goals at the expense of women's rights and with the intent of further exploitation of women.<sup>18</sup>

The examples of "pro-choice" advocates supporting coercive population control, including forced abortion, are numerous. For example, Lawrence Lader, founder of the National Abortion Rights Coalition, and author of the pro-abortion tract Abortion (1966) which cited as an authority eight

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<sup>18</sup> While this argument is only tangentially related to the issues at hand, ample evidence can be found in the J. Kasun, The War Against Population: The Economics and Ideology of Population Control, (1988) (hereinafter Kasun); A. Chase, The Legacy of Malthus: The Social Costs of the New Scientific Racism (1977) (hereinafter Chase), J. Simon, The Ultimate Resource (1981) (hereinafter Simon); G. Greer, Sex and Destiny (1984) (hereinafter Greer).

times in Roe v. Wade, was instrumental in convincing N.O.W. to adopt a pro-choice position because of the symbolic importance of the "right of women to control their own bodies."<sup>19</sup> But while Lader defends a "pro-choice" position on one hand, he is also a radical proponent of coercive population control, arguing that forced population control, including forced abortion, is "imperative," both at home and abroad, since "We must accept the principle that having a child is no longer a matter of private will, but of public welfare."

[Lader, 218-222.]

In a review of the Chinese program of forced population control which includes forced abortion, forced sterilization, forced contraceptive implants, and infanticide of handicapped newborns and undesir-

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<sup>19</sup> Lader, Abortion II: Making the Revolution, 36-40 (1973).

able female offspring, Lader has only the highest praise.<sup>20</sup> Similarly, N.O.W. president Molly Yard has defended the Chinese anti-choice policy, saying: "I consider the Chinese governments policy among the most intelligent in the world...a one-child per family policy."<sup>21</sup> And the international arm of Planned Parenthood has willingly sacrificed millions of dollars of U.S. government funding rather than stop providing personnel and funding to support the coercive population control in China.

Planned Parenthood has frequently supported coercive population control. For example, at the White House Conference on Hunger in 1969, Dr. Charles U. Lowe of H.E.W. and Dr. Alan Guttmacher of Planned Parenthood urged a national policy of (1)

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<sup>20</sup> Lawrence Lader, "The China Solution," Science Digest, 91:4, April 1983, 78.

<sup>21</sup> Transcript of "Oprah Winfrey Show," July 6, 1989.



mandatory abortion for any unmarried girl found pregnant within the first three months of pregnancy, and (2) mandatory sterilization of any such girl giving birth out of wedlock for a second time.<sup>22</sup> Planned Parenthood president Faye Whattleton has likewise promoted an us-against-them, rich-versus-poor mentality as motivation for population control at any price.<sup>23</sup>

<sup>22</sup> E. Craven, "Abortion, Poverty and Black Genocide: Gifts to the Poor?", Abortion and Social Justice, eds. Hilgers, 235 (1972). Similarly, Frederick Jaffe, Vice President of the Planned Parenthood/World Population and head of research for Alan Guttmacher, has argued for government population programs which would require "permits for children", "compulsory sterilization of all who have two children", "compulsory abortion", "encourage homosexuality", and "fertility control agents in water supply." Family Planning Perspectives, Special supplement-U.S. Population Growth and Family Planning: A Review of the Literature, vol. 2, no. 4, October 1970, ff.p.24.

<sup>23</sup> In a fundraising letter [Simon, 327] Whattleton inflames the fears of true-blue Americans against the rising expectations of Third World peoples, writing: Thai women and millions of other women like them in India, China, Africa and

Pro-choice sources also reveal that some abortionists openly display sexist and even misogynous attitudes toward women;<sup>24</sup> they

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throughout the developing nations control our destiny. Their decisions--decisions of hundreds of millions of young women--about their family's size--control your future more surely, more relentlessly than the oil crisis or the nuclear arms race.

...unless population growth is harnessed and slowed to meet the limited resources and human services of these nations, development will be shattered. Chaos, mass famine and war will continue to increase. We will be affected for better or worse.

The great tinderbox of revolution and international anarchy is rising expectations of the world's masses coupled with unrestrained population growth. Starvation, revolution and violent repression will fill our headlines unless human fertility is reduced... (Emphasis her own.)

In short, her message is that if we do not control them, they will breed themselves into a position of power over us; preservation of America's dominance depends on aborting, sterilizing, and contracepting the Third World at any price.

<sup>24</sup> Denes, In Necessity and Sorrow 227, 79, 134 (1976); Nathanson, Aborting America, 110 (1979); Zeckman and Warrick, "Abortion Profiteers" Special Reprint, Chicago Sun-Times, 11-15, (1978); Reardon p266-270.



provide abortions less to help the women than to prevent these "unfit" persons from raising "unfit" children.<sup>25</sup> Such attitudes are pervasive, throughout the medical and population control industry.<sup>26</sup>

Persons or organizations who advocate coercion, privately or publicly, would certainly not hesitate to conceal or under-

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<sup>25</sup> Dr. Edward Allred, owner of the largest chain of abortion clinics in California is a staunch advocate of abortion as a method of controlling the population of minority groups: "Population control is too important to be stopped by some right-wing pro-life types. Take the new influx of Hispanic immigrants. Their lack of respect of democracy and social order is frightening. I hope I can do something to stem that tide; I'd set up a clinic in Mexico for free if I could.... When a sullen black woman can decide to have a baby and get welfare and food stamps and become a burden to all of us it's time to stop." "Doctor's Abortion Business Is Lucrative", San Diego Union, Oct. 12,, 1980 B1:1.

<sup>26</sup> For an in depth analysis of the population controller's shocking disregard for the health of Third World women, see noted feminist Germaine Greer's, Sex and Destiny (1984). See also Simon, Chase, and Kasun.

state the risks of abortion or birth control, or even experiment on women with insufficiently tested technologies.<sup>27</sup>

For example, at a 1962 conference sponsored by the Population Council, the IUD was being promoted as the panacea for controlling the world's "overpopulation." Arguing that the risks of IUD use were acceptable, Dr. J. Robert Willson, of the University of Michigan School of Medicine defended its wide-spread promotion saying: "If we look at this from an overall, long-

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<sup>27</sup> In 1970, Planned Parenthood President, Dr. Alan Guttmacher testified before a Senate subcommittee that the health dangers of the Pill are secondary to the social "dangers" of pregnancy and overpopulation. "Expert Decries 'Alarm' on Birth Control Pill," New York Times, Feb. 26, 1970, 50:3. Similarly, Dr. Ravenholt, head of AID's population control programs, defended the widespread promotion of Depo-Provera, despite initial negative results, on grounds that the ill-effects could not be fully ascertained until tested on tens of millions of women. Ehrenreich, et.al., "The Charge: Genocide," Mother Jones, November 1979, p30.

range view, perhaps the individual patient is expendable in the general scheme of things, particularly if the infection she acquires is sterilizing but not lethal." These "expendable" patients are, of course, the "non-productive" welfare recipients, "irresponsible" teenagers, and the "ignorant masses" of the world's underdeveloped nations.<sup>28</sup>

Dr. Robert S. Mendelsohn has criticized the medical community for participating in the social engineering program of population controllers at the expense of women's health:

...some of the worse examples of callous experimentation on unsuspecting women involve new forms of birth control...It is clear to me that present-day physicians will do almost anything to

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<sup>28</sup> R. Mendelsohn, Male Practice: How Doctors Manipulate Women 120 (1981) (hereinafter Mendelsohn).

prevent women from having babies, particularly if they are black or brown, uneducated, or poor. They have been so brainwashed by the population control zealots that no price is too high to pay to lower the birth rate among welfare mothers or in the underdeveloped countries of the world. [Mendelsohn, 126]

Population control zealots have announced their determination to advance their goals without regard to local customs, religious beliefs, or national sovereignty. According to Planned Parenthood policy, population control agencies in America and abroad "should not use the absence of law or the existence of an unfavorable law as an excuse for inaction [in promoting birth control and abortion technologies]; action outside of the law, and even in violation

of it, is a part of the process of stimulating change."<sup>29</sup>

If population controllers are willing to promote their agenda in violation of public law, certainly they are willing to promote it in violation of individual rights.

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<sup>29</sup> The Human Right to Family Planning, International Planned Parenthood Federation, London, 20-21 (1984). Accordingly, International Planned Parenthood has established a policy of promoting and training illegal abortions in developing countries which forbid abortion. [Kasun, 188] Similarly, in the U.S., pro-abortion groups such as the Federation of Feminist Women's Health Centers have vowed to train illegal abortionist and teach women self-abortion techniques, the most dangerous kind of abortion, if abortion becomes illegal. ("Group says it will teach do-it-yourself abortion technique," State Journal-Register, Springfield, IL, July 23, 1989, p37) Clearly, these abortion proponents are willing to encourage dangerous abortions even at the risk of killing women; indeed if such deaths occur, they will use such deaths to prove the need for "safe and legal abortions" as they have in the past. But in fact, the legality of abortion has never guaranteed its safety, in terms of morbidity or mortality. See the Feminists for Life Brief in Webster v. Reproductive Health Services.

While the sincerity of population controllers beliefs are not at issue here, it is noteworthy that the myth of overpopulation has been thoroughly exploded and the overwhelming benefits of population growth are only now being understood.<sup>30</sup> For over seventy years eugenicists have been using the threat of imminent national and worldwide disaster as an excuse to interfere with the reproductive lives of people, both at home and abroad, who are either poor, illiterate, or disenfranchised. When

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<sup>30</sup> See authorities Simon, Kasun, Chase. Even population controllers and eugenicists admit that the arguments against their theory of limited world resources and overpopulation are difficult to refute, but insist merely that their approach of population control is a safer bet. [Hardin, "The Tragedy of the Commons," Science, December, 1968, 1243-1248.] Hardin, incidentally, was one of the earliest proponents of abortion as a "woman's right to control her own body," yet he too supports coercive population control programs, especially of "feeble-minded" groups, because "Injustice is preferable to total ruin." ibid.



boiled down to its essence, their overpopulation theory is predicated on 1) the fact that on average poor people (and nations) always have more children than rich (and nations), and 2) the fear that the children of the poor pose a threat to the wealth and security of the rich.<sup>31</sup>

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<sup>31</sup> See Authorities Chase, Greer, Kasun, Hardin. For many wealthy individuals and nations, population control has become a substitute for charity. According to one Planned Parenthood supporter, "I'm hooked on this charity...It prevents the need for other charities." (New York Times, Feb. 4, 1978, p20.) Indeed, Planned Parenthood founder, Margaret Sanger abhorred supportive charities for the poor, especially pre-natal medical care, because such charities "perpetuate constantly increasing numbers of defectives, delinquents and dependents. My criticism, therefore, is not directed at the 'failure' of philanthropy, but rather at its success." Sanger, The Pivot of Civilization 105-123 (1922).

For many individuals and governments, advocacy of population control of the poor has supplanted truly progressive social legislation. [Craven, 223-242] It is not poor women who have lobbied the government for abortion and birth control, it is the rich who lobby for it for them. ibid For most poor women, it far easier to get birth control pills than aspirin, easier to get an abortion than dental care. This fact of discrimination is not lost on minorities.

## VI. THREATS TO TRUE REPRODUCTIVE FREEDOM FROM PRIVATE INTERESTS AND THE STATE REQUIRE THAT THE INDIVIDUAL'S NATURAL RIGHT TO REPRODUCTIVE FREEDOM MUST BE CLARIFIED AND STRENGTHENED.

While Amici asks the Court to explicitly confirm the State's right to regulate birth control technologies, such as abortion, Amici also recognizes a need to clarify and strengthen the legitimate and inherent reproductive rights of all persons.

As noted above, population controllers pose a real threat to reproductive freedom.

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According to Mrs. Laura Anderson, a black social worker: "The current issue of population, in my mind, displaces an emerging American conscience for human dignity and eradication of poverty and hunger....In my opinion, when we attempt to solve problems by getting rid of people or potential people who will have these problem, like welfare recipients and those who will be poor or hungry, that's genocide. And I join with many people in making this charge against the move toward population control." [Rosenblum, "Coercion in Liberation's Guise," Abortion and Social Justice, ed. Hilgers, 154 (1972).]

The State in turn may also pose such a threat. Federally funded family planning programs have periodically come under attack from recipients who felt coerced into "voluntary" sterilizations or "elective" abortions.<sup>32</sup>

In Buck v. Bell, 274 U.S. 200,207 (1927) the Court explicitly allowed the State to force sterilization on any person considered a "potential parent of socially inadequate offspring" because it is "better for all the world, if instead of waiting to

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<sup>32</sup> "[T]here is uncontroverted evidence in the record that...poor people have been improperly coerced into accepting sterilization..." U.S. District Court of D.C., Judge Gesell, Relf V. Weinberger, civil actions Nos. 73-1557,74-243, March 1974.) See also Craven, 263; Reardon 272-278; and Chase, 16-19. In a study of four Indian Health Service hospitals between 1973 and 1976, the GAO found that 3406 sterilizations were performed without the patient's informed consent as a result of a general policy to restrict population growth of Indians. Miller, "Native American Peoples on Trail of Tears Once More," America, 9 December 1978, 423.

execute degenerate offspring for crime, or let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."<sup>33</sup>

The threat of government control of reproduction even extends outside our

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<sup>33</sup> Two years prior to Buck v. Bell, an unknown European foreshadowed Holmes' decision claiming that the unfit were sapping the strength of the State, and in order regulate their births, "the State will have to avail itself of modern medical discoveries. It must proclaim as unfit for procreation all those who are afflicted...and practical measures must be adopted to have such people rendered sterile." The book calling for control of reproduction as a cornerstone of social policy was Mein Kampf, by Adolf Hitler. [Chase,135]

By 1932, American sterilization programs had forcibly sterilized 15,000 persons. German health officials, in turn, structured German eugenic programs on the American model. Ludmerer, Genetics and American Society 118 (1972); Drogin, Margaret Sanger, 24 (1980). When the Germans surpassed America's population control efforts, Paul Popenoe of the American Birth Control League (the original Planned Parenthood), praised the Germans for "proceeding toward a policy that will accord with the best thought of eugenicists in all civilized countries." Ludmerer, 117.



borders. In 1976 U.S. policy, which conditions foreign aid on aggressive population control policies, prodded India into forcibly sterilizing three million people in mobile tent-camps.<sup>34</sup> American policy has similarly encouraged coercive population control programs in numerous other Third World nations. [Kasun, 79-94]

But for population controllers, the model government program of population control is China's one-child policy which includes the forced abortion of women who are "handcuffed, tied with ropes or placed in pig's baskets." [Kasun, 91]

True reproductive freedom does not exist under present interpretation of Constitutional rights. If under Bell the State has

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<sup>34</sup> Kasun, 85-86. At approximately the same time, Dr. Ravenholt, director of AID's Office of Population insisted that one-quarter of the fertile women of the world must be sterilized to meet U.S. goals of population control and to maintain "the normal operation of U.S. commercial interests around the world." [ibid, 81]

the right to prevent the reproduction of undesirable persons, then surely this would encompass the right to implement forced abortions, or forced contraceptive implants. All that currently separates American population control policy from Chinese policy is the legislative will to openly embrace coercion.

Amici argues that the first step which must be taken toward restoring reproductive freedom is the abandonment of the umbrella "right of privacy." It must be recognized that when the Court first began to articulate this "right," it burdened itself with vague terminology which by its very nature can be either totally meaningless or irresistibly powerful.<sup>35</sup>

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<sup>35</sup> The right of privacy presently guiding judicial decision is an undefinable enigma; it "cannot be said to be absolute" [Roe, 154] yet it is a "fundamental" right which repeatedly prevails over State interests. Does the "right of privacy" include only sexual behavior? Birth control access? Reproductive freedom? All private



Envisioned as arising from the shadowy penumbra of the Constitution, this "right" lacks clear guiding principles or even a common understanding which can serve to protect the people, guide the judiciary, or justly restrict the legislatures. Thus, if only for the sake of clarity in the law, this catch-all "right of privacy" must be repudiated.

Amici argues that in the place of the "right of privacy" the Court should recognize the "natural reproductive right" of individuals. This more narrowly defined right addresses the issues raised by the contraception and abortion cases, and draws a clean line between the rights of individuals and the privileges of the State.

With seventy years of legal confusion surrounding issues related to reproductive freedom, such a clarification of the law is

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behaviors? Semi-private behaviors?

urgently and immediately needed from the Court. A logical and timeless framework for defining the "natural reproductive rights" of persons is described in the remainder of this brief.

A. THE FUNDAMENTAL RIGHTS OF REPRODUCTIVE FREEDOM AS GUARANTEED IN THE CONSTITUTIONALLY RESERVED RIGHTS OF INDIVIDUALS ARE THOSE NATURAL RIGHTS WHICH ARISE FROM A PERSON'S NATURAL SEXUALITY. SPECIFICALLY, 1) THE STATE MAY NOT FORCIBLY LIMIT ANY PERSON'S NATURAL FERTILITY OR PREVENT PERSONS FROM NATURALLY CONCEIVING OR BEARING CHILDREN, AND 2) THE STATE MAY NOT FORCE ANY PERSON TO CONCEIVE CHILDREN NOR COMPEL ANY PERSON TO PROVIDE REPRODUCTIVE MATERIAL FOR THE ARTIFICIAL CONCEPTION OR GESTATION OF CHILDREN.

Whether or not one believes the Declaration of Independence's claim that the inalienable rights of all persons are

endowed upon them by their Creator, the natural reproductive rights of all people are clearly central to our biological humanity. Any law which transgresses these timeless rights for the sake of any social goal, whether to eliminate the "unfit" or to "create a race of thoroughbreds" through eugenic manipulations, violates all human dignity and freedom.

History demonstrates that the more totalitarian a State becomes, the more likely it is to seek to control every aspect of life, even and especially human reproduction, so as to control both the "quality" and quantity of its population. Accordingly, no just government has the right to coerce or force sterilization, contraception, or abortion upon any person or group of persons. Recognition of this right must begin with a rejection of Buck v. Bell.

Amici would further argue that the right to natural fertility includes the right to enter into a natural, heterosexual marriage for the purpose of establishing a family.

But while the right to intercourse within marriage is an inalienable corollary to the natural right of reproduction, sexual activity outside of the marital covenant is not similarly included. The distinction lies in the fact that extramarital intercourse is rarely intended as an exercise of reproductive freedom, but instead is an exercise of sexual self-gratification. Furthermore, the State has had a long standing, and well recognized interest in safeguarding and promoting the special nature of marital relations and protecting the stability of the family unit. Sexual activity outside of marriage such as fornication, adultery, homosexuality, incest, statutory rape, and bestiality have never been recognized as natural rights,

and the State should retain the power to legislate against such activities. Such activities are contrary to nature, destructive of the family, exploitive of persons, diminish human dignity, and beget children into unstable families.

On the other hand, the State's right to discourage sexual activity outside of marriage must still be limited to the extent that it may not forcibly limit the natural fertility of persons engaged in extra-marital activities. Furthermore, the children of illicit unions should be accorded the same rights and status of all other persons since by their conception, their parents entered into a de facto marriage covenant, though perhaps a bigamous one, which invokes mutual responsibilities and duties toward their children and each other.

The right of natural reproductive freedom was alluded to by the Court in

Eisenstadt v. Baird, 405 U.S. 438, at 453, in its statement regarding the right to self determination with regard to an individuals "decision whether to bear or beget a child."

While Amici agrees with the core principle of individual reproductive rights which underlies this statement, the conclusions reached in Eisenstadt are overly broad. For while every individual has the right to control his or her natural reproductive powers, this right does not include the right to use any means or technology a person wants to control the bearing and begetting of children.

While the State must be prohibited from infringing on natural reproductive rights, the State does have a legitimate right to regulate and even proscribe birth control technologies which can be used to limit fertility, enhance fertility, or artificially create new human, or non-human, life.



Since all technologies have social and economic consequences, health consequences, moral consequences, and very frequently, unforeseen consequences, and are subject to abuse, nearly all technologies have at one time or another been subject to liability claims in the courts and regulation by duly empowered governments.<sup>36</sup>

With regard to birth control technologies, a term which includes artificial conception and gestation technologies as well as contraceptive and abortifacient technologies, the consequences of these technologies are becoming increasingly complex. For example, the issues of surrogate mothers, custody of frozen human embryos,

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<sup>36</sup> The only types of technology which might have some claim to Constitutional protection are technologies related to the right to bear arms. But even this technology cannot be given an absolute status. Individuals are not entitled to own any conceivable weapon, but rather are entitled to "reasonable" access to firearms.

in vitro fertilization, and visitation rights of sperm donors, are even now perplexing both the judiciary and the legislature. In the future, such issues as genetic engineering, artificial wombs, animal wombs, cloning for replacement organs, and a whole host of other technologies will arise which will dwarf the present quagmire. Surely the State must have a legitimate interest in regulate present as well as future birth control technologies.

There is no Constitutional basis for distinguishing between birth control technologies and any other technology. Therefore, the Court cannot and should not treat birth control technologies as a "favored technology" and impose restraints on the right of States to regulate this class of technologies.

To limit the right of States to regulate technology on the basis of a shadowy "right of privacy" which is dimly perceived within

the Constitution and hazily-defined within this Court's rulings, is a short-sighted course which will surely lead to ever more confusion in the decades ahead. Perhaps worse, such a limitation on the States will serve as an invitation to technocrats to exploit men and women with ill-conceived and dangerous technologies which will wreak havoc on individuals and society.

B. THE STATE'S REGULATION OF BIRTH CONTROL TECHNOLOGIES POSES NO THREAT TO THE INDIVIDUAL'S NATURAL RIGHT TO REPRODUCTIVE DECISIONS.

While the State has a right to regulate birth control technologies, it is obvious that the State has no interest or desire to enact a general prohibition of birth control technologies. Indeed, quite to the contrary, federal, state, and local governments have been spending hundreds of millions of dollars promoting contraceptive

use. Given the overwhelming public and government support for increasing contraceptive use, there is no realistic basis in the allegations of abortion proponents that allowing the States to regulate reproductive technologies would lead to a ban against all birth control. Even if some States were to choose to regulate some birth control technologies for reasons of health, moral, or social interests, it is evident that such regulation would be accompanied by promotion of other contraceptives as a substitute.<sup>37</sup>

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<sup>37</sup> It has been falsely argued that anti-abortionists seek to eventually ban all birth control technologies. But in fact no one has ever suggested any rationale or desire to seek a Constitutional ban or court ruling which would limit or ban the states from allowing contraceptives. The grain of truth to these allegations is that if constitutional safeguards for the human embryo are ever recognized or enacted, this safeguard would prohibit chemical abortifacient as well as surgical abortion. But such a turn of events, would not effect contraceptive and sterilization technologies and would serve only to direct birth control research into the pursuit of these

Furthermore, even the abstract possibility that the State might one day seek to "force" population growth by a ban on contraceptives poses no threat to reproductive freedom. The history of population growth, around the world, shows that even without access to contraceptive technology or abortion, peoples of all eras and nationalities have limited their births according to their needs through the employment of delayed marriage, withdrawal, periodic or total abstinence, or even with unreliable rhythm methods.<sup>38</sup>

These natural methods of fertility regulation have been advanced in the last twenty years by the discovery of at least six new methods of natural family planning, each with many variations, which employ

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non-abortive alternatives.

<sup>38</sup> See authorities Greer, Kasun and Simon

from one to seven body symptoms for identifying the exact time of female fertility. The most commonly recommended methods have method effectiveness ratings for avoiding pregnancy of from 97-99 percent, rates which are at least comparable to the Pill, and easily exceed the effectiveness rates of IUDs, condoms, jellies and the rest.<sup>39</sup>

These natural methods of fertility control, both the old and the new, employ no technology, only self-knowledge. The dissemination of such knowledge would be protected by First Amendment rights.

Therefore, it is unreasonable to believe

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<sup>39</sup> The final report of a 1978 federal study of NFP, found a 100 percent method effectiveness rate for a Sympto-Thermal variation of NFP and a 94% effectiveness rate for the Ovulation Method. The highest tested effectiveness rate ever reported belongs to a variation of the Temperature-Only method which has been demonstrated to have only 7 unplanned pregnancies per 10,000 fertile woman-years, a rate which is less than half the failure rate for vasectomy. J. Kippley, The Art of Natural Family Planning, 14-17 (1984).



that even an oppressive government's ban against all birth control technologies could never "force" people into having "unwanted" children.

The existence of natural methods of birth control demonstrates that individuals will always have reasonable alternatives to birth control technologies and a reasonable opportunity to exercise their reproductive freedom. The State is not obligated to guarantee any more than these natural opportunities, though in its sovereignty it is certainly free to provide technological aids if it so chooses.

In some ways, natural reproductive rights are similar the right of free speech. Ultimately, the inalienable right to free speech is guaranteed by the natural abilities of humans to communicate. But while the right of free speech is enhanced by mass communication technologies, not all persons have equal access to these techno-

logies, nor is the State required to provide access to these technologies. Clearly, while speech is a natural right which the State may not infringe upon, technological enhancements of this right are open to regulation.

If regulation of free speech or reproductive technologies become unduly oppressive, the natural rights of individuals provide a safeguard by which the people can subvert or overthrow an oppressive rule. Thus, the Court can and should restrict itself to protecting these natural rights.

When these timeless, natural rights are protected, the people will be able to press the government for the subsidiary "rights" to the technologies they desire to enhance their natural rights. Left alone, the laws passed by properly elected legislatures will eventually come to reflect the "compelling" interests of the people. Such laws cannot, by definition, be oppressive

of natural rights since the people of a democracy will not freely vote to oppress themselves.

#### CONCLUSION

In summary of the above arguments, Amici respectfully petitions the Court to: (1) hold that the Minnesota statute, Minn. Stat. Ann. §§ 144.343 (2)-(7), is constitutional; (2) reject Roe v. Wade and its progeny; (3) sustain the result of Griswold v. Connecticut; (4) reject the overly broad results of Eisenstadt v. Baird; (5) reject Buck v. Bell; (6) reject the "right of privacy" as unconstitutionally vague; and (7) recognize the "natural right of reproductive freedom" as a fundamental and inalienable right of all human beings.

It is clear that the confusion created by these prior cases and mishandled issues has led to the conflict at hand. The natural right of reproductive freedom suggested here is in keeping with the

historical and moral values of both the Western and Eastern heritages, and is in accord with the natural law, right reason, and the fundamental respect of individual human dignity. Such a timeless principle would certainly have received the unanimous consent of America's Founding Fathers.

Sixty years of judicial activism in the area of reproductive control must necessarily be reversed swiftly and completely. Amici urges the Court to recognize the right of States to regulate reproductive technologies however they deem necessary, and at the same time, restore protection in the law for every individual's natural right to reproductive freedom.

Respectfully submitted,

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## APPENDICES



## APPENDIX A

## DESCRIPTION OF AMICI

The Elliot Institute for Social Sciences Research is an independent, not-for-profit research group committed to a program of original research in the areas of abortion, birth control, and population control. It is a leader in researching the long-term physical and psychological effects of abortion on women, and it is actively involved in research exposing the myth of overpopulation and its origin in the racist and exploitive of the eugenic and population control movements.

The American Academy of Medical Ethics is a professional organization with an affiliation of 20,000 physicians who are committed to preserving the guiding

principles of the original Hippocratic Oath. As a consequence of its member's fidelity to this ancient and honored oath, the AAME is dedicated to the preservation and protection of all human life, from the moment of conception until the moment of natural death. Therefore, the AAME opposes the use of medical technology to destroy the lives of unborn children, opposes the abuse of medical science for the purpose of exploiting women and the poor, and opposes the withholding of medical treatment from the disabled or infirm for the purpose of shortening their lives.

## APPENDIX B

A SUMMARY OF SOME PUBLISHED CASES  
OF MINORS AND WOMEN COERCED INTO ABORTION

Some summaries from D. Reardon, Aborted Women - Silent No More (1987):

1. Gaylene "Hayes" was manipulated into an abortion by school authorities and was encouraged to conceal the pregnancy and abortion from her parents. After the abortion, at age 14, she became self-destructive. p36-40.
2. Alice Gilmore, 18, was manipulated into an abortion by clinic despite her repeated announcements that she wanted to keep her baby. Afterwards, she suffered sexual dysfunction, loss of self esteem, and severe depression. p147-150

3. "Tammy Conrad," 18, discovered she was pregnant while she was hospitalized for psychiatric care. She desired to keep the baby, but was subsequently coerced by her psychiatrist into an unwanted abortion "for her own good." She subsequently become suicidal. p179-182
4. Jakie Bakker became pregnant as the result of rape at age 19. After being counseled to abort, she suffered many physical and emotional aftereffects which were more severe and longlasting than her reaction to the rape. She feels lied to by abortion providers. p206-210.
5. Edith Young was forced into abortion without her understanding or consent at age twelve to hide the fact of her pregnancy resulting from an incestuous

- rape by her step-father. When she later learned what abortion was, and that she had been forced not only into sex, but into the "murder" of her child, she suffered severe a emotional impact on her subsequent self-destructive behavior. She believes she and her baby could have been protected if her natural father had been informed. p212-218.
6. Jerri "Porter", 18, was pressured by her boyfriend into aborting a pregnancy which she wanted to keep. Family planning counselors encouraged the abortion, insisting that her desires to keep the baby were not "realistic." p278-279.
7. Lorijo Nerad and her husband Jim, during a time of temporary unemployment, were pressured by welfare caseworkers into sterilization and abortion of a wanted



child. The negative emotional impact on both of them led to child abuse, drug abuse, and radical personality changes. p273-278.

Some summaries from C.M. Friedman, et al. "The Decision-Making Process and the Outcome of Therapeutic Abortion," American Journal of Psychiatry, (1974)

1. "Candice," a 22-year old woman with borderline intelligence but with no previous history of mental illness, was pressured into an unwanted abortion by a genetic counselor, a surgeon, and her parents. Forty-eight hours later she began to go through denial of the abortion and became so agitated that she was transferred to psychiatric hospitalization because she lacked the "ego resources to deal with her grief."
2. "Krista" felt pressured into an abortion by a boyfriend who backed down from a promise of marriage. She subsequently post-abortion psychiatric illness which required psychiatric treatment.

Samples of testimonies of coercion contributed to the files of the Elliot Institute for Social Sciences Research.

Testimony of "Susan Blossmor" on file at the Elliot Institute.

Dear Sir,

Thank you for your interest in abortion. I want to tell my story in order to help others from making the same mistake and feeling the horrible pain. Although it is hard for me to do it helps me face my feelings. Thank you for giving me this chance. If you have questions feel free to contact me.

After I became pregnant, my family would not support my decision to keep my baby. My boyfriend said he would give me no emotional or financial help whatsoever. All the people that mattered to me told me to abort. When I said I didn't want to

they started listing reasons why I should. "It would be detrimental to your career and health. You will have no social life, no future with men." Could I actually do it? I started feeling like maybe I was crazy to want to keep it. I finally just told everyone that I would have the abortion just to get them off my back, but inside I still didn't want to have the abortion. Unfortunately when the abortion day came I shut off my inside feelings. I was scared to not do it because of how my family and boyfriend felt.

I know my decision would have been different if at least my parents would have supported me. I just felt so alone in my feelings to keep my baby.

I'm so angry at myself for giving in to the pressure of others. If there is one thing that I learned from this experience - that is never to give in to other people's

opinions on your own situation. Stand up for what you know is right!!

When I went to the clinic, the counselor that I spoke with did not ask me if I was sure about my decision. She did not try to ask me how I felt about the whole thing. She just explained the procedure briefly. Inside I was screaming for her to ask me how I felt about what I was going to do so I could tell her that I just didn't feel right about it, but I was just too far away from my feelings at that point to be able to speak out. I had turned off my feelings for the moment.

When I was lying on the procedure table waiting for the doctor a nurse sat with me and held my hand. I started crying and she said that I wasn't sure that I was doing the right thing. She just said that I was fortunate that abortion was legal and I was able to have this procedure done. She then said that the procedure was safe

and didn't hurt very much. She said, "We just ask that you don't scream or yell because the other patients in the next room would be able to hear." She then tried to get my mind off of what was going to happen by asking me about boating on Lake Michigan. I wanted to get up off that table then but was afraid of what my boyfriend and parents would say and do. That nurse did not want to hear about my doubts. She could not have cared much about how I felt about the abortion. She was worried about other patients hearing me. My God! All she was worried about was her job -- assisting in the procedure.

After the procedure while I was in the recovery room I was very upset and crying. The nurses would not even look at me. It was like they just didn't want to deal with my feelings. I was the last person done that day so they started to clean the procedure room. A nurse came out of the



procedure room and started rinsing the clear plastic tubes of the suction tubes in the sink in the recovery room. They were full of blood! I couldn't believe how insensitive they could be.

As soon as I came out of that procedure room I knew I had made the biggest mistake of my life. While still in the room I said to myself, "Ok, now you're suppose to feel relieved." That's what the books said I would feel (I read about abortion beforehand). Well I kidded myself with that idea for about 30 seconds I did not feel relieved. I hated myself! But it was too late -- my baby was dead! It was the worst feeling of frustration that I've ever had in my entire life. I could not reverse what I had done. God help me!

Two days after the abortion I wrote a suicide note to my parents and boyfriend. I just couldn't fathom how I could possibly live with the knowledge of what I had done.

I killed my own baby! I went down the basement and figured out how to shoot my father's pistol. Hysterical and crying I put the barrel of the gun into my mouth. All of a sudden I heard someone upstairs. For some reason my father had stopped by to pick up something (at 10 a.m. usually no one is home). I stopped what I was doing and went upstairs. He saw that I was upset and asked me if I wanted to have lunch with him at noon. I felt I at least owed him lunch. By the time lunch was over I was too scared to do it. Eventually I came to the conclusion that I should look to the future.

Since the month after my abortion I've been trying to get pregnant again. I've tried 4 months in a row now. But since my boyfriend is away at school my timing of sexual intercourse and ovulation has not coincided. He does not know that I am doing this. I know that is not fair to

him. But I can't think of any other way to make up for what I have done. Rationally I know what I'm doing is maybe stupid. But a big part of me just has to make up for things. I can't explain but I just have to get pregnant again. I just got off the phone with my boyfriend. I'm going to see him this weekend to try again.

I still am not satisfied with my choice today. It has not been that long since the abortion. I would be just about 7 months pregnant right now. My baby was due at the beginning of April. But I do not think my feelings on this will ever change. I killed my own child. How can anyone ever feel that type of choice was a right one? The only thing that gives me some comfort is the knowledge in my heart that my child is in a much better place than we know with God. I believe that when I die I will finally be able to see my baby. I'm so sorry.

Sincerely,

"Susan Blossmor"

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 Testimony of "Jill Nolan" on file at the  
 Elliot Institute

Dear Sir,

This is a letter from one who regrets her abortion very much. I was still 19 when I got pregnant living with a boyfriend (who is soon to be my ex-husband) in Detroit on Michigan Avenue by Livvennois. And I was faced with "the CHOICE". How I'd wished I could've been like the wholesome looking mother-to-be on the T.V. commercials. The one with a cute maternity dress and a nursery all made up ready and waiting and a warm protective husband coming home, putting his arms around her saying "honey, I can hardly wait."

My boyfriend wanted nothing to do with a future with me. A baby implied a future, commitment. He had already gotten the cow for free - why raise the calf?

Yet in the face of abandonment, I did not look at reality and use my courage to squarely tell him what I wished to do. "I'm going to have this baby, whether you stay and meet my emotional needs or not."

As human beings, we have 2 basic needs; for love and worth, to love and to be loved, to feel worth about yourself and to have the security of knowing someone sees worth in you. In desperation, to meet these needs in my life even temporarily, even imaginarily, I grasped on to my boyfriend and his insistence that I have an abortion. Thus I sacrificed my first born to the idol of temporary emotional security.

It was so easy to be swayed, despite vague moral convictions that abortion was

murder. For I felt so immature, selfish and unready to have a child.

Are mothers ever ready? Babies and children bring out the best and the worst in us. Yes, we have the potential for learning of a noble self sacrificial, forbearing kind of love, but, more often than that, children on a daily basis, also expose our own innate selfishness. The power both to train and scar our children lies in our hands. And there is little support in our society to help a woman choose to keep and raise her child. Parents, many from scarred backgrounds need education on how to train and love their children and this is not readily available.

My boyfriend and my family insisted that there was no way out but to choose abortion. I chose to be verbally manipulated to carry out their point of view, rather than thinking through the choice. I was given no alternatives. A



clinic was quickly found to take care of our little "problem."

At the clinic, the doctor seemed so abrupt and angry, so tense and under pressure. I felt like the only difference in his eyes between me and the unborn child in my womb was 19 years. Had I been 19 years younger, unable to speak and helpless, I too would have met the same fate in his office, the death penalty. The crime, being a "useless" member of society. My life seemed so valueless in the doctor's sight.

A person's self esteem (the worth they feel about themselves) determines the value they place on the lives of others. "Love others as you love yourself." Yet how do you love others when, deep down, you despise yourself?

The Nazi movement didn't start with Hitler. He just jumped on the bandwagon of a movement originating in the 20's by a

groups of doctors and psychiatrists in Germany. They proposed "mercy" killing of elderly or mentally impaired members of society. These dear peoples lives were valueless in their sight. Hitler just extended this kind of thinking to the Jews (the apple of God's eye) and other minority groups. I believe that this same kind of thinking (stemming from zero self esteem) is what is behind abortions in this country.

At the clinic I learned a shameful lesson I wished I'd never learned, perhaps the same lesson Nazi soldiers learned when "just carrying out orders" in concentration camps. I too, was just "following orders." I wanted to be a "good" girlfriend. I pray that now, I can be (instead of a spineless robot, the gutless wonder) a woman of conviction.

The weeks, months, years following the abortion, I fell in and out of depression

(only masked for a time by bursts of desperate hyperactivity). The sadness over what happened hangs about me like the hovering scent of funeral flowers that linger in a room after the funeral has come and gone.

I later got pregnant. But this time, I battled with my own selfishness and fears and my boyfriend and stood up for my rights to be a mother and for the rights of my unborn child, who is soon going to be nine and is very beloved by us all.

I am now being divorced. I never enjoyed sex for years and this damaged my live-in relationship and shortlived marriage to this same boyfriend. Whenever we made "love" I saw the CHOICE of abortion looming behind every expression of "love" between us.

Now, I am engaged to be married to one in whose eyes I am loved, one who sees me

and all human beings as a pearl of great price. His name is Christ.

I'm pro choice now. I'm determined not to let anybody but Christ (through the common sense plan of conduct transformation laid out in his word, the Bible) influence my moral choices anymore. I want to be an independent thinker and not let man do my thinking for me anymore. If you don't "do" your own thinking, someone else will "do" your thinking for you.

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Testimony of Jeanene Clark on file at the Elliot Institute.

When I was 16 years old I became pregnant and subsequently had an abortion. This decision was based upon lies and lack of knowledge has caused me many years of anguish and will continue to do so for the rest of my life. Here is my story:

August 1977 - I was 16 and I was pregnant. I knew this because I had gone to the local Health Department for a free pregnancy test and they had called me back that morning. The counselor on the phone asked me what I was going to do. What was I going to do? I had just began "experimenting" with sex. I wasn't suppose to get pregnant. That happened to other people, not me. I answered the counselor, "I don't know, maybe an abortion. I just don't know." The counselor picked up on this statement and offered to make an appointment for me at a Dallas abortion clinic. I agreed. I was never counselled towards anything, or offered any alternative other than abortion. My abortion was publicly funded.

A few days later I was taken to the Fairmont Abortion Clinic in Dallas, Texas. Upon arrival I was "counselled" about the

abortion I was about to have. The counselor showed me a picture of a six week old "fetus." (The age they had decided on for my baby) This picture looked like chopped liver. I was told by the counselor that at this stage of development, the fetus was not a baby. That it was no more than a "wad of tissue." I was informed that there was nothing to the procedure. It would not hurt any more than menstrual cramps, and there were few side effects. I was told that I would have to stay there for an hour after the abortion (which I did not do) to make sure my bleeding was not too severe. That I should take a morphine pill to relax me and I could have a morphine shot with the pill if I wanted it. I did not. I was taken to an exam room when I was placed in an examination position. The doctor asked if I minded if a woman who was being trained observed the procedure. I agreed. The doctor dilated



my cervix and proceeded to insert the vacuum aspirator. I felt when the baby caught and immediately began having severe cramps. The doctor finished and they rushed the bottle (which contained my baby) out of the room before I could see it. This tends to disturb the patient when she sees her baby (who only minutes ago was sleeping peacefully in her womb) ripped to shreds in a glass jar. I was then taken to a waiting area to make room for another woman who had made the "choice" to murder her baby. I continued to have severe cramps for the rest of the day. I felt sad and empty, as if a part of my soul had been taken away.

As I looked back at my post-abortion life, I realize that so many of the mistakes that I made and created for myself were due to the subconscious image I had created of myself, I had killed my own

baby. How could anyone love me when I couldn't love myself?

I began to drink heavily and use drugs. I had severe depressions in which I contemplated suicide. I had and still have horrible nightmares involving babies and people trying to kill me. I still get depressed and cry a lot. I pray at night that God will let my baby know that I didn't kill him because I hated him. I long to hold him so much now that it hurts, and I want him to know that.

I harbor secret fears that one of my children will be taken from me because of this horrible act that I have committed. This fear was compounded when I almost miscarried one of my children at twelve weeks. I feel sure the problem was connected to my abortion. The problems go on and on. I had never allowed myself to calculate the month that my baby would have been born. Recently I figured out when the

baby would have been born and was horrified when I realized that it was within weeks of when both of my children were born. I had felt intense pressure from within myself to become pregnant at this particular time with both my children. And now the realization has hit me that subconsciously I have substituted my live children for my dead child, by conceiving and giving birth at the same times.

I have spent many years trying to push the memory of what I have done to the back of my mind, but it won't stay there. I have constantly compared my dead child to what he would have been doing had he lived. I understand that most women who choose to abort experience the same feelings. My child would have been in first grade this year. It's very hard for me to look at a first grader.

I have shed many tears over the last few years and now I'm angry. I'm angry at

myself, my family, Fairmont Clinic, their counselors, the doctors, (who can commit murder on a daily basis) and most of all I'm mad at my government, who prints "IN GOD WE TRUST" on our coins, yet has legalized the daily painful, violent slaughter of the youngest members of our society.

I hope and pray that our great nation can turn this thing around before it is too late for all of us. And most of all before we as individuals have to stand before God and confess what we have done to His most perfect creation.

Signed

Jeanene Clarke

BEFORE ME, the undersigned authority on this day appeared Jeanene Clarke who affirmed the above statements under oath, and has stated that they are true and correct.

Lillian E. Mahoney  
Notary Public in and for Texas  
My commission expires: 7/31/85